IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1046 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FATAMBIBI WD/O UMARKHAN GULABKHAN PATHAN

Versus

FAKRUDDIN S MALEK

Appearance:

MR BJ JADEJA for Petitioners

MR HM PARIKH for Respondent No. 1, 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/03/2001

ORAL JUDGEMENT

#. The present revision application has been filed under section 115 of the Civil Procedure Code challenging the order passed by the Deputy Collector, Nadiad in Revision Application No.24/93. The Deputy Collector by his order

dated 30.6.1994 rejected the revision application filed by the present petitioners which was filed under section 23 of the Mamlatdar Courts' Act and has confirmed the order of the Mamlatdar.

#. The present respondent No.2 herein had filed the suit before the Mamlatdar under section 5(2) of the Mamlatdar Courts' Act. It is the case of the respondent No.2 herein before the Mamlatdar that the plaintiffs are owners and in occupation of the agricultural land situated at village Sanghana, Taluka Matar being Block No.668, Survey No.258/2 and Block No.683, Survey No.254/2. That on the northern side of the said lands, there is a land of the defendants being Survey No.259/2 having Block No.667. It is the case of the plaintiffs before the Mamlatdar that the defendants have tried to obstruct their way which they used to enjoy for going to their land by creating some obstructions. That such obstructions were created 25 days back, that is, within six months the suit has been filed from which the cause of action has arisen. The Mamlatdar, Matar by his order dated 23.3.1993 allowed the suit of the plaintiffs. The defendants were directed to make the road for passage as well as for taking water through Dhaliya as mentioned in the operative part of the order. The defendants were also restrained from preventing the plaintiffs from passing and repassing through the disputed land with their bullock-cart, tractor and other agricultural implements.

#. The said order was challenged by way of revision application by the defendants, i.e. present petitioners herein before the Deputy Collector, Nadiad. The Deputy Collector came to the conclusion that, there is nothing on record to show that, another alternative road is available to the plaintiffs. If, there is any such road, parties can get their rights adjudicated through the competent Civil Court. The Deputy Collector has also considered the Panchkyas which was produced on record by the parties and considering the facts and circumstances of the case, revision was dismissed.

#. By way of present revision application, the petitioners have challenged the order of the Deputy Collector dated 30.6.1994.

#. Mr.Jadeja, learned counsel for the petitioners has strenuously argued that the Deputy Collector has not given proper reasonings in his order and that the order of the Deputy Collector is very cryptic. He, therefore, submitted that, there is an error of jurisdiction as the

Deputy Collector has not exercised the jurisdiction properly vested in him in law and that the Deputy Collector in any case should have remanded the matter back to the Mamlatdar.

#. It is required to be noted that the Mamlatdar has given very cogent reasons while deciding the issue nos. 1 and 2. The Deputy Collector has come to the conclusion that, it will be open for the parties to adjudicate their rights in the civil court.

#. It is pertinent to note that, this court though admitted the matter, has not granted the interim relief to the present petitioners. This is a revision application against the order in revision passed by the Deputy Collector, which in fact would be in substance, second revision. It cannot be said that, the Deputy Collector has committed any error of law or jurisdiction while deciding the revision application. Both the courts below have found that the case of the plaintiffs for injunction was just and proper and I do not find any error either in the order of the Deputy Collector or in the order of the Mamlatdar. However, it is clarified that, if any substantive suit is filed by the parties before the competent civil court, whatever observations which might have been made either by the Mamlatdar or the Deputy Collector may not be taken into account and the said civil suit may be decided on its own merits. I do not find any infirmity either in the order of the Mamlatdar or in the order of the Deputy Collector, and therefore, it cannot be said that the Deputy Collector has committed any error of jurisdiction while deciding the revision application. This revision application is dismissed. Rule is discharged with no order as to costs.

(P.B.Majmudar,J)
(pathan)